

## CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Magdalena Azmitia	Team: Squad #3	CCRB Case #: 201806935	<input checked="" type="checkbox"/> Force	<input type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Sunday, 08/19/2018 6:45 PM	Location of Incident: § 87(2)(b)	Precinct: 105	18 Mo. SOL 2/19/2020	EO SOL 2/19/2020	
Date/Time CV Reported Wed, 08/22/2018 12:58 PM	CV Reported At: CCRB	How CV Reported: On-line website	Date/Time Received at CCRB Wed, 08/22/2018 12:58 PM		

Complainant/Victim	Type	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. POM Michael Rogers	28421	919608	105 PCT
2. POM Matthew Gammon	24298	950462	105 PCT

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. POM Dylan Simpson	20631	959238	105 PCT
2. POF Ashley Aufiero	19013	964897	105 PCT
3. POF Maryann Lodico	15140	943389	105 PCT
4. POF Jessica Koehler	24502	957743	105 PCT
5. POF Jacqueline Adelson	19600	958215	105 PCT
6. POM Adnan Mohammad	15194	960952	105 PCT
7. POF Marissa Monaco	09789	963656	105 PCT
8. POM William Dugan	00351	959610	105 PCT
9. Unknown Maresca		960872	

Officer(s)	Allegation	Investigator Recommendation
A.POM Matthew Gammon	Abuse: Police Officer Matthew Gammon stopped an individual.	
B.POM Matthew Gammon	Abuse: Police Officer Matthew Gammon stopped an individual.	
C.POM Matthew Gammon	Abuse: Police Officer Matthew Gammon stopped § 87(2)(b)	
D.POM Michael Rogers	Abuse: Police Officer Michael Rogers questioned § 87(2)(b)	
E.POM Michael Rogers	Abuse: Police Officer Michael Rogers frisked § 87(2)(b)	
F.POM Michael Rogers	Force: Police Officer Michael Rogers used physical force against § 87(2)(b)	
G.POM Michael Rogers	Abuse: Police Officer Michael Rogers threatened to remove § 87(2)(b) to the hospital.	

### Case Summary

On August 22, 2018, § 87(2)(b) filed this complaint via the CCRB's online complaint form.

On August 19, 2018, at approximately 6:45 PM, § 87(2)(b) was sitting in front of his home at § 87(2)(b) in Queens with two unidentified friends when they were approached by PO Matthew Gammon and PO Ashley Aufiero of the 105<sup>th</sup> Precinct and began asking questions about a robbery that had taken place nearby (**Allegations A and B, Abuse of Authority: § 87(2)(g)**; **Allegation C, Abuse of Authority: § 87(2)(g)**). More officers, including PO Maryann Lodico and PO Michael Rogers of the 105<sup>th</sup> Precinct, arrived at the location. PO Rogers immediately approached § 87(2)(b) and asked for identification, followed shortly thereafter by, "Where's the weed?" PO Rogers patted § 87(2)(b)'s left pocket, and § 87(2)(b) moved away, after which PO Rogers placed his hands on § 87(2)(b)'s shoulders and allegedly took him to the ground. On the ground, PO Rogers and PO Adnan Mohammad of the 105<sup>th</sup> Precinct placed § 87(2)(b) in handcuffs. PO Rogers repeatedly asked § 87(2)(b) what was wrong with him and stated, "You're going to go to the hospital, you okay? Are you on meds or anything?" (**Allegations D-G, Abuse of Authority and Force: § 87(2)(g)**). § 87(2)(b) was ultimately arrested for § 87(2)(b).

Body worn camera footage of this incident was recovered and is attached to IAs 59-68.

### Findings and Recommendations

#### Allegation (A) Abuse of Authority: Police Officer Matthew Gammon stopped

§ 87(2)(b)

#### Allegation (B) Abuse of Authority: Police Officer Matthew Gammon stopped

§ 87(2)(b)

#### Allegation (C) Abuse of Authority: Police Officer Matthew Gammon stopped

§ 87(2)(b)

§ 87(2)(b) testified to the CCRB that he had been in front of his home for approximately two to three hours when he received a Citizen App notification on his cell phone about a robbery which had taken place at a § 87(2)(b) approximately two to three blocks away [BR 01]. § 87(2)(b) is a § 87(2)(b)-old black male, 6'3" tall, with a beard. § 87(2)(b) noted that he was wearing a green and white Nike sweat suit at the time of the incident. § 87(2)(b) was about to enter his home when PO Gammon and PO Aufiero began approaching his property, and he asked them not to step onto his lawn. PO Aufiero stated that § 87(2)(b) looked suspicious and matched the description of § 87(2)(b) for whom they were looking. The description was of a dark skin male with a beard. § 87(2)(b) did not recall the names of the individuals with him at the time of his interview and did not respond to subsequent contact attempts from the CCRB to obtain the individuals' names.

PO Gammon testified to the CCRB that he was made aware of a robbery in progress involving three males at a store [BR 04]. The officers who responded to the robbery requested that officers canvass the area for three males. PO Gammon did not respond to the robbery and did not recall any of the details that were provided over the radio but noted that no other descriptors were provided aside from three black males. One of the males was said to be approximately 5'7" tall and wearing a white shirt. After canvassing for approximately 20 minutes, PO Gammon

observed § 87(2)(b) and his two male friends in front of his home and noted that one of § 87(2)(b)'s friends fit the description of the robbery suspect provided over the radio. As PO Gammon and PO Aufiero got out of their vehicle, they discussed their next steps, which was to question whether they had heard or knew anything about the robbery. PO Gammon noted that all three individuals were stopped although only one of them matched the description provided. PO Gammon asked the group whether they had seen or heard anything about the robbery and said that they fit the description. PO Gammon went over the radio and requested central dispatch to repeat the description of the suspect so that the group could understand the reason for the stop. PO Gammon was not asking whether the individuals were directly involved with the robbery but was asking whether they saw anything and did not recall whether he directly asked if they were the perpetrators of the robbery.

§ 87(2)(g)

PO Aufiero did not recall any specific details about the description provided for the suspect but noted that it was a vague description of a black male. After several minutes of canvassing PO Gammon saw § 87(2)(b) and his friends, one of whom matched the description, and a stop was initiated. PO Gammon was driving and there was no discussion about what steps to take before the stop was initiated. PO Gammon exited the vehicle first and PO Aufiero followed. When PO Aufiero and PO Gammon approached, § 87(2)(b) was irate, waving his hands around, and did not want to talk to officers. PO Aufiero requested that the description of the suspect be repeated over the radio. PO Aufiero noted that only one of the individuals was considered stopped because he matched the description. PO Aufiero did not recall whether § 87(2)(b) was informed that he was not being stopped.

Stop reports were prepared by PO Gammon for § 87(2)(b) and each of his two friends, although only the report prepared for § 87(2)(b) contained any contact information [NYPD 08]. All three stop reports noted that the stops were based on proximity to the scene of a crime.

Police radio communications from event #§ 87(2)(b) regarding the robbery feature the operator providing the following description of the robbery suspect: “two male blacks, both in their 30s, one was wearing a gray t-shirt” [NYPD 09].

PO Aufiero's body worn camera footage begins after the interaction with § 87(2)(b) and his friends has been initiated [NYPD 03]. § 87(2)(b) is seen speaking to the officers before the audio begins, after which PO Aufiero is heard saying that one of the individuals matches a description that was put over the radio and asks whether they saw anything in the area. When asked what the description was, PO Aufiero states that it was a “male black with a gray shirt on.” § 87(2)(b)'s friends, one of whom is a black male who appears to be in his 20s and is wearing a gray t-shirt and sweatpants, is seen sitting on the front steps of § 87(2)(b)'s home. PO Aufiero requests over the radio for the operator to repeat a description. The operator is heard saying, “The only thing that I have right now is two male blacks...and one of them has a gray shirt. I have no further...”

PO Gammon's body worn camera footage reflects the same conversation and also begins after the interaction has already been initiated [NYPD 04].

NYPD Patrol Guide Procedure 212-11, which addresses investigative encounters and stops, notes that a level 3 encounter, or Terry Stop, is “any encounter between a civilian and a uniformed member of service in which a reasonable person would not feel free to disregard the officer and walk away” [BR 07]. During a level 3 Terry Stop, an officer may detain a person while an “expeditious investigation” is conducted to determine if there is probable cause to arrest the person. A level 3 Terry Stop requires reasonable suspicion, which exists when “the

information known to the member of the service would make an ordinarily prudent and cautious police officer under the circumstances believe criminal activity is at hand,” and requires articulate specific facts establishing justification for the stop.

In *People v Hargroves*, 296 AD2d 581 [2d Dept 2002], the court held that the police lacked reasonable suspicion to stop and detain a group of young black males on the basis of the complainant's report that he had been beaten and robbed by a "group of male blacks," one of whom was wearing an orange coat or jacket [BR 05]. The description was deemed not sufficient for the officers to detain the individuals.

In *People v Durant*, 175 AD2d 176 [2d Dept 1991], officers stopped three men, including Mr. Durant, who were seen standing outside with the suspect of a recent assault [BR 06]. The court found that the officers had no reasonable suspicion to believe that Mr. Durant was committing, had committed, or was about to commit a crime simply because he was in the company of an individual who had committed assault.

§ 87(2)(g)

§ 87(2)(g)

**Allegation (D) Abuse of Authority: Police Officer Michael Rogers questioned** § 87(2)(b)  
**Allegation (E) Abuse of Authority: Police Officer Michael Rogers frisked** § 87(2)(b)  
**Allegation (F) Force: Police Officer Michael Rogers used physical force against** § 87(2)(b)

**Allegation (G) Abuse of Authority: Police Officer Michael Rogers threatened to remove § 87(2)(b) to the hospital.**

In his testimony to the CCRB, § 87(2)(b) stated that more officers, including PO Michael Rogers, arrived on scene within minutes of PO Gammon's and PO Aufiero's arrival [BR 01]. PO Rogers approached § 87(2)(b) and passed his right pocket, followed by his left pocket. He asked § 87(2)(b) for identification and asked whether § 87(2)(b) lived there and tapped his pocket again. § 87(2)(b) told PO Rogers not to touch his pocket, to which PO3 said, "I'm not touching you." PO Rogers then touched § 87(2)(b)'s right arm and torso, and § 87(2)(b) told PO Rogers not to touch him. § 87(2)(b) called 911 to report that officers were harassing him but did not complete the call because PO Rogers brought him to the ground by pulling him down. § 87(2)(b) landed face down on the ground, and he was turned onto his right side and handcuffed, after which officers sat him upright. § 87(2)(b) sustained minor scrapes to his hand and his knee but did not tell officers that he was injured. While on the ground, PO Rogers asked § 87(2)(b) if he was mentally ill or on any drugs and stated that § 87(2)(b) might need to go to the hospital. § 87(2)(b) remained on the ground for approximately five minutes, after which he was picked up from the ground and placed into a police vehicle.

In PO Rogers' body worn camera footage, PO Rogers immediately approaches § 87(2)(b) and asks him for identification [NYPD 05]. § 87(2)(b) is heard asking, "Why are you touching me?" to which PO Rogers replies, "Watch your mouth." PO Rogers' hands are not visible, and it is unclear whether or where he touched § 87(2)(b). PO Rogers asks, "Do you have ID on you?" followed by "Where's the weed?" § 87(2)(b) is heard repeatedly asking PO Rogers to stop touching him. PO Rogers puts his hands on § 87(2)(b)'s shoulders, then pulls his hands down after § 87(2)(b)'s back reaches the fence behind him. It is unclear whether § 87(2)(b) is moved to the fence or if he goes of his own accord. Once § 87(2)(b) is on the ground, several officers assist in placing him in handcuffs. § 87(2)(b) continues to complain that PO Rogers kept touching him when he did nothing to PO Rogers, who repeatedly asks, "What's wrong with you?" PO Rogers is heard saying, "You're going to go to the hospital, you okay? Are you on meds or anything?" § 87(2)(b) is lifted off the ground and taken to an RMP, after which PO Rogers asks, "Are you on any kind of medication?" several times. PO Rogers says, "Do you need to go to the hospital to talk to someone?"

PO Rogers retired from the NYPD on November 1, 2018 [NYPD 07]. § 87(2)(g)

**Civilian and Officer CCRB Histories**

- This is the first case to which § 87(2)(b) has been a party [BR 09].
- PO Matthew Gammon has been a member of service for eight years and has been a subject of one other CCRB complaint with one allegation which was not substantiated.
- It is unknown for how long PO Michael Rogers was a member of service. He was a subject in 13 other CCRB complaints with 23 allegations, three of which were substantiated.
  - Case #9903342 involved substantiated allegations of discourtesy, force, and refusal to provide name and shield number. The Board recommended charges. It is unknown what action was taken by the NYPD.

**Mediation, Civil and Criminal Histories**

- This case was not eligible for mediation.
- On July 15, 2019, a request to determine if a Notice of Claim was filed was submitted; confirmation from the Office of the New York City Comptroller will be forwarded upon receipt [BR 08].
- [§ 87(2)(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)]  
[REDACTED]

---

Squad No.: 3

Investigator: \_\_\_\_\_  
Signature Print Title & Name Date

Squad Leader: \_\_\_\_\_  
Signature Print Title & Name Date

Reviewer: \_\_\_\_\_  
Signature Print Title & Name Date